Mr. Chairman, and members of the committee, it is my pleasure to appear today, bringing to your attention my research into the proposed C.I.A. exemption to the Freedom of Information Act.

By way of introduction, I am Angus Mackenzie, director of the Freedom of Information Project at the Center for Investigative Reporting in San Francisco. I am a freelance reporter; this year my stories have appeared in Jack Anderson's column in more than 550 newspapers, on the cover of the Society of Professional Journalists magazine, The Quill, which goes to 28,000 scribes, and in the publication of the Newspaper Guild, called the Guild Reporter, among others.

I gained my expertise in the FOIA by banging my head against agency reluctance to supply documents that I know exist. Specifically, in 1979 while on assignment for the Columbia Journalism Review, themost prominent publication of its kind. I requested that the Central Intelligence Agency release files it accumulated during its campaign against the dissident U.S. press. As you know, the agency is prohibited from internal-security functions by the 1947 National Security Act, and because the exemptions to the FOIA enacted by Congress are NOT supposed to be used to cover up illegal activities, I expected the CIA to release them. That was in 1979.

With permission of the chairman, I wish to submit for the record of this hearing several of my articles describing the efforts of the CIA to keep those records from me. Suffice it to say that one of the goals of this legislation is to keep from me, and from the American public, information on how the CIA led the U.S. intelligence community on a war against domestic newspapers that were opposed to the Vietnam conflict.

The CIA infiltrated newspapers like the Quicksilver Times of Washington, D>C>, and kept control of local police informants through double-blind arrangements so that local informants in such places as Lubbock, Texas, did not know that the information they were giving local police regarding the publication of mimeographed sheets against the war was really going to the Central Intelligence Agency.

At the time, my article, "Sabotaging the Dissident Press," was published by the Columbia Journalism Review in March, 1981, not one record released to me under the FOIA by the CIA. I am still trying to obtain CIA documents regarding that campaign.

The first obstacle the agency threw in my path was a large fee for the search of its records. The agency wanted a down payment of $30,000 and a promise to pay a total of $61,501 for

the search, in return for which the agency said it might find no documents releasable. On the same day that my article was being picked up by the Associated Press, both in newspapers and radio stations nationwide, the agency stated that my work would not benefit the general public and so no fee waiver would be granted in this case.

With pro bono counsel provided by Steptoe and Johnson, obtained for me by the Reporters Committee for Freedom of the Press, I filed suit against the CIA June 14, 1982, and that case is still very much before the courts. Judge Pratt in this district has ordered the CIA to finish processing records on Ramparts magazine by May 15. However, from what we hqave seen so far it is clear that the agency is severely censoring most of the documents I have requested. In other instances, the agency has not admitted to possessing records which I can prove to this committee exist. In other instances, the agency has released records to others, but not to me, showing in my opinion some degree of arbitrariness. To the agency's credit, it forgot all about the $61,601 fee the minute I stepped into federal court with my complaint. The agency granted me a fee waiver in that case, but not in most of my other pending FOIA requests.

So that gives a brief explanation of how I come to be here today, and why I have gained some expertise with the FOIA, and how it applies to the CIA.

I oppose H.R 5164. I bring from The Newspaper Guild President, Charles A. Perlik, Jr., who regrets that he cannot be here today, a message for the commmittee. The Newspaper Guild is against this legislation, and asks you not to report it to the House.

This legislation has sailed through the Senate, and through one House committee, without even one public discussion of what this bill would cover up. Indeed, we have heard that this bill would hide nothing. The CIA says that. The ACLU says that. But I don't say that. I bring to you today research to show exactly what the agency intends this bill to hide, including some very embarassing CIA activities, like those actions against the dissident U.S. press.

I will also raise some political questions concerning whether or not Congress at this point really thinks it wise to grant to the Director of Central Intelligence sweeping new powers to keep secrets when he has been roundly blasted for keeping information from Congress regarding the mining of Nicaraguan ports. But first, allow me to examine with you the precise wording of the legislation before us -- wording that my research indicates was drafted by the CIA.

What does H.R. 5164 really say, and why? It says that operational files of the CIA may be exempted by the Director of Central Intelligence from the provisions of the FOIA.

Then, Sec. 710 (b) defines "operational files." That term

So the question of CIA domestic political activities is not exactly a thing of the past, necessarily.

Section 710 c) (3) presents another problem. It says that I will be able to request records when those documents have been "the specific subject matter of an investigation by the intelligence committees of the congress, etc."

Well, now, my request for CIA records of operation CHAOS which targeted the underground press, comes under this section. Indeed, because CHAOS was the subject of an investigation by Sen. Church°s committee on Government Operations with respect to intelligence activities, it might seem that those records would be accessible to me. But no. The Church committee did not SPECIFICALLY inspect the agency's files on the underground press, and this proposal would allow the CIA to therefore deny my request. Provisions such as this provide the CIA with loopholes which render the FOIA virtually useless.

At the House Intelligence Committee hearings on this legislation I specifically asked Mr. Mayerfeld what files on the dissident U.S. press might be available under FOIA should this legislation be enacted -- given that Sen. Church°s committee overlooked them. Mr. Mayerfeld said that he'd have to do more research into that question. The agency has used every legal and less-than-legal trick in the book to keep those files from me, and Mr. Mayerfeld's non-answer means that this section of the proposal would be used in court to deny my access to those files that now are almost 15 years old. At any rate, we might be tied up in court for the next five years figuring out whether that language means those files are exempt. The CIA has more money to pay lawyers than any newspaper in the nation, and any proposed legislation that would delay the release of information while what the meaning of the language is hashed out in court, accordingly serves the agency's intent.

So, to conclude this section of my testimony, I hope that I have begun to show that while the agency says this proposal would cover up nothing, that this is far from the case. The proposed law would in reality cover up much that is embarrassing to the agency.

Whether or not the proposed law is a coverup is a hard question to answer. First, C.I.A. files are secret. So no one outside the agency knows much about operational files. Second, the F.O.I.A. is so technical, especially in regards to the C.I.A., that only a handful of experts understand the bills.

However, this investigation has discovered that C.I.A. officials intend the proposed law to cover up some of its most embarassing illegal operations -- and some of its blunders. Worse, C.I.A. officials at a hearing on the proposal at the Capitol February 8 asked the House Intelligence Committee to remove one of the only checks on the agency's power -- judicial review of its files as provided for in the F.O.I.A.

F.O.I.A. requesters who are refused documents may file civil suit in federal court for the release of information. Judges may

means "(1) files of the Directorate of Operations which document the conduct of foreign intelligence OR intelligence OR security liaison arrangements OR information exchanges with foreign governments or their intelligence or security services."

Now I have capitalized the ORs here. Because what this bill as now written says is that intelligence activities of the CIA as recorded in DO are exempt from disclosure. The committee should understand that this amounts to an exemption from the search and release requirements of the FOIA for CIA domestic operations which were prohibited and still are prohibited by the 1947 National Security Act. This is because since 1967, CIA domestic operations have been run in part by the Directorate of Operations, and so files on any future domestic intelligence operations in the Directorate of Operations would be hidden by this legislation. I do not believe that it is Congress's intent to with this bill allow the CIA to cover up domestic operations of questionable legality. Yet that is exactly what this legislation will do, if passed.

Further, the bill as now written will allow the CIA to hide from the search and release requirements of the FOIA its liaison arrangements with local U.S. police departments. Again, the 1947 National Security Act prohibits CIA police functions, and we know that at least from 1967 onward the agency has worked very closely with local police, including running local police informants who were inside dissident publications. Now, as written, the proposal would allow the agency to hide documentation of any such continuing relationships of questionable legality with local police departments.

Likewise, the bill would allow the CIA to cover up its past and any future domestic operations by calling those operations "counterintelligence." This bill provides that counterintelligence files no longer have to be searched and released. Fine. Counterintelligence is the word the agency used to describe its entire program against the civil rights movement, the antiwar movement, and the so-called underground press. In other words, by approving this language, the Congress will be providing statutory permission for the CIA to cover up its domestic operations, which many fine people in the CIA agree are illegal. And that point, I am afraid, has not been raised in previous hearings on this proposal.

As I have said, I am opposed to this legislation, largely for the above reasons. If you are going to approve this measure, I would strongly hope that this committee would change the language of the measure, removing the ORs so that just foreign counterintelligence operations on foreign soil be exempted, and that only foreign security liaision arrangements be exempted. The least that could be done is not make this bill a coverup for domestic activities of questionable legality. I need not remind the committee that on December 4, 1981, President Reagan authorized CIA domestic counterintelligence activities again, and that the Director of Central Intelligence has been implicated by the White House chief of staff in domestic political espionage.

then summon the requested papers to their chambers, read them, and decide whether the agency's withholding decision was correct. So far the C.I.A. has not lost a single case on appeal. Nevertheless, it unnerves intelligence officials to have judges inspect their files.

In addition, C.I.A. officers dislike judicial review because the possibility of inspection prompts the agency to disclose information that it might otherwise withhold.

After F.O.I.A. suits are filed, officials release information to head off the possibility that a judge might reverse the agency's decision to withhold documents.

One section of the bill passed by the Senate may retroactively remove judicial review by permitting the dismissal of pending cases that now seek C.I.A. operational files. Last year Senator Patrick J. Leahy, Democrat from Vermont, asked the C.I.A. to specify which lawsuits the proposed law might dismiss of the sixty-odd pending against it. The C.I.A. responded on September 22 with a list of 12 that it said "may be affected." This investigation has centered on that unpublished list and has pulled the complete filings out of courthouses from around the nation -- a task not performed by either of the congresssional intelligence committees which approved this legislation.

This C.I.A. list of suits that this legislation may affect essentially remains the only indiction of agency intent in a debate stymied by the cloak over the files in question. Here, then, are the suits the agency says might be dismissed by the proposed law, giving some indication of the type of information the agency wishes to hide under this proposed law.

* Ann Arbor, Michigan -- Glen L. Roberts owns a computer software company. He publishes a newsletter that describes itself as "a fresh outlook on government arrogance." He requested C.I.A. files on David S. Dodge, formerly the acting American University president in Beirut who was kidnapped there July 19, 1982, and released July 21, 1983.

The C.I.A. failed to produced its records. Roberts sued. On September 28, 1983, U.S. District Court Judge Charles W. Joiner ordered the C.I.A. to produce information by January 26, 1984. One day prior to that deadline, the agency express mailed Roberts five Directorate of Operations documents which indicated inconclusively that the agency did not have much direct knowledge of the Dodge affair. The papers were heavily censored.

Roberts is now seeking more of the withheld Dodge documents. His lawsuit remains on the C.I.A.°s "may be affected" list apparently because the information he wants is held by the agency's Directorate of Operations, which is one of the departments of the agency to be exempt from disclosure under the proposed law.

* Washington, D.C. -- On August 6, 1982, Monica Andres, formerly the librarian for the American Civil Liberties Union's Center for National Security Studies, requested C.I.A. documents regarding agency involvement in the El Salvador elections of March, 1982. The C.I.A. failed to produce and the Center sued on

October 5, 1982. In response, the agency released some information.

One memorandum of January 22, 1982, two months before the election, appears to describe what the agency proposed to assist the balloting. Subpoint A in that memo details the intended use of "indelible ink" to identify those who might try to vote more than once, and the need for 8,000 lights to illuminate the identifying ink on voters' hands. Other subpoints were deleted.

One expert on Central America, Robert Armstrong, says, "On the basis of those documents, we can say the C.I.A. was involved in the El Salvador elections in areas other than had previously been admitted by the Director of Central Intelligence. If we get the rest of those documents, we could see what that role was."

A C.I.A. affidavit filed with the court says the release of more information "would reasonably be expected to increase tensions between the U.S. and the country at issue."

* Washington,D.C. -- The C.I.A. responded to another Center for National Security Studies suit by releasing reports from C.I.A. infiltrators inside the Students for a Democratic Society (the defunct radical group), the Vietnam Veterans Against the War, radical U.S. bookstores and newspapers, and the Los Angeles antiwar convention at the University of California July 21 and 22, 1972. The agency also released an informant report on Pacific News Service, the San Francisco-based syndicate. Those domestic operational files are of particular interest because the agency is prohibited from "internal-security functions" by the 1947 National Security Act.

The C.I.A. included this lawsuit in its "may be affected" list, perhaps because, as CNSS attorney Graeme W. Bush says, "We've gotten a whole lot of documents from the operational files. Although some say the files are worthless, the Center has found useful stuff in them."

Washington, D.C. -- J. Gary Shaw of Cleburne, Texas, is investigating with a coalition of researchers the President John F. Kennedy assassination. So he requested C.I.A. files on suspects including right-wing French terrorists in Dallas that fateful day who hated Kennedy. The C.I.A. refused Shaw's 300 requests for information, so he sued the agency 32 times. Since those lawsuits began, the agency has released to Shaw four linear feet of files, his attorney says.

Shaw's suits have been consolidated, and now six of them constitute half of the 12 on the "may be affected" list, making the Kennedy-related information the single biggest pile of paper the agency has said it wants to hide under the proposed law.

One source who attended a secret meeting to discuss the list between representatives of a congressional committee and C.I.A. attorneys says the Kennedy-related requests are indeed for operational files and so clearly would be dismissed by the Senate's version of the legislation.

Reader's Digest writer Henry Hurt says the Kennedy C.I.A. files are "essential" and he is incorporating those released to Shaw in his forthcoming book on the tragedy. Shaw says the

nuggets of information contained in the files already released to Shaw contradict C.I.A. claims that any operational files that have been released contain little useful information.

Says Hurt, "There's no one left at the C.I.A. who understands the relevance of those files. If they DO think there's anything useful in them, they WON'T release it. It is my job to make sense out of those thousands of pages. Each nugget I discover contributes to the larger picture. It is chilling to think of having those files cut off by this legislation."

* New York City -- Digest writer Hurt wrote a book on Dr. Nicholas George Shadrin, who had commanded a Russian navy destroyer before he defected to the U.S. in 1959. On December 20, 1975, something went wrong. Shadrin disappeared from Vienna, Austria and is presumed dead.

Hurt and others have accused the C.I.A. of mishandling Shadrin, of twisting his arm to become a double agent, a role that ended with his disappearance. Tad Szulc in New York magazine roasted the agency for using Shadrin as "bait for the Russians."

To clarify matters, on July 9, 1979, Reader's Digest requested Shadrin's C.I.A. file. The C.I.A. refused. On September 11, 1979, the Digest sued. In court, C.I.A. officials said 50,000 pages of information were involved -- a document count that later ran the agency into trouble with the judge. Intelligence officials also said, "The Shadrin case is of such sensitivity that the disclosure of even fragementary details...could jeopardize the lives of our sources."

Nevertheless, under the gun of judicial review, the agency between January and May, 1980, released 61 Shadrin documents. U.S. District Court Judge Robert J. Ward was convinced by the C.I.A. that "this information should not be revealed," and he prepared to dismiss the case.

The C.I.A. then changed its document count from 50,000 to 205,000 and displayed other inconsistancies so gross that the judge reversed his inclination to dismiss the case and complained, "The court has been lead on a merry chase." The judge asked the U.S. attorney if pending legislation might affect the case, on which the judge was spending so much time. The U.S. attorney indicated no such legislation was pending. However, unknown to the judge, legislation that might affect the case had been introduced to Congress three years earlier in 1979, and was high on the C.I.A.°s list of congressional priorities.

The judge ordered the Shadrin file brought from C.I.A. headquarters into his chambers for his inspection because he could no longer believe the C.I.A. Ten months later, on April 22, 1983, the C.I.A. had yet to deliver the papers to the judge.

"The old government game is at work, that if we delay long enough, they will go away," complained the judge. Finally, only 5,000 pages were brought to his chambers. His decision is pending on whether to make that information public.

* Washington, D.C. -- The C.I.A. list of suits that may be affected includes one that seeks information on behalf of this correspondent regarding the agency's targeting of dissident U.S.

periodicals, exposed in "Sabotaging the Dissident Press," Columbia Journalism Review, March/April, 1981. C.I.A. congressional liaision Ernest Mayerfeld refused to specify to this reporter which of its files on U.S. publications the agency would seek to hide with this proposed law. To answer that, he said, would require further research. This suit seeks withheld documents on the New York-based radical Guardian, the defunct Washington, D.C., Quicksilver Times, which was infiltrated by C.I.A. agent Salvatore John Ferrera, and Ramparts magazine.

The C.I.A. claims the proposed law would cover up nothing. But really the measure would allow the agency to hide some of the most controversial information in its possession. Even if pending lawsuits were allowed to continue, as provided for in the House bill, the proposal would give the C.I.A. more ammo in court with which to fight future releases of information. Indeed, the court battles under the proposed law would be so expensive and lengthy that attempts to obtain information by F.O.I.A. lawsuit might be beyond the resources of journalists. The agency, never a friend of free information, always leaning naturally toward secrecy, will certainly use this proposed law to keep its operations secret.

Reporters need access to government documents to inform the public. To allow Mr. William Casey to designate which of his agency's documents will be kept from the public is a conflict of interest not allowed other agency chiefs. And when that CIA head himself was, as the President's campaign manager, involved in domestic political espionage, as exposed by Debategate scandals, the broadening of his already-considerable power to keep secrets seems a dubious proposition, especially when he is under fire for illegally withholding information from Congress regarding the mining of Nicaraguan ports. Instead, Congress might better safeguard open government by strengthening, not weakening, the power of the judiciary to inspect and order the release of information concerning the activities of all government agencies, especially the CIA, whose covert operations here and abroad continue to be so controversial.

And finally I would like to answer one question -- why, when the Department of Defense, like the CIA, holds much classified data, does the DoD so promptly respond to FOIA requests, while the CIA maintains such a large backlog? The answer was given to me by an old State Department and CIA hand, who attended the House Intelligence Committee hearing on this legislation. He said that the DoD has always kept on eye on public opinion, and has had to lobby hard and publicly for its appropriations. So when the public asks DoD for something under the FOIA, DoD responds as the laws says it must. But, pointed out this observer, the CIA has never had to worry as much about public opinion, nor about the public debate over its appropriations. That for me explained the mystery of why the CIA drags its feet on the FOIA when DoD, also full of secrets, makes an effort to comply with the time limits of the FOIA. What the CIA needs is not this legislation to clear up its paperwork, but rather instructions from Congress that it must now comply with the FOIA.